

JAM7ZARC

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 867 (RMB)

5 REZA ZARRAB, et al.,

6 Defendants.

7 -----x

New York, N.Y.  
October 22, 2019  
9:15 a.m.

10 Before:

11 HON. RICHARD M. BERMAN

District Judge

12  
13 APPEARANCES

14 GEOFFREY S. BERMAN

United States Attorney for the  
Southern District of New York

15 BY: MICHAEL LOCKARD

16 SID KAMARAJU

DAVID DENTON

17 JONATHAN REBOLD

KIERSTEN FLETCHER

18 Assistant United States Attorneys

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(In open court)

THE COURT: Please be seated. I note from the press this morning that Mr. Atilla has been appointed to head the Istanbul Stock Exchange. I'm just passing that along in case you haven't seen it.

MR. LOCKARD: That's known to be the case, your Honor, yes.

THE COURT: I suppose that's one way of integrating back into society a person who has been convicted of a financial wrongdoing.

But to the case at hand, I have received a copy from the government of the letter from King & Spalding indicating that -- well, I will read the first paragraph. It says, "Dear Judge Berman, I am a partner of King & Spalding and an attorney admitted to practice in this district. The U.S. attorney's office has informed me that the Court has issued a summons in this case" -- our case -- "for an initial appearance on October 22 at 9:15 a.m. Neither I nor my firm are authorized to accept service on behalf of Halk Bank and are not authorized to make an appearance in this case." And it's signed by Andrew Hruska.

Is that your understanding as well?

MR. LOCKARD: Yes, your Honor, we also received a copy of the letter Friday.

THE COURT: I was somewhat -- I don't know if taken aback is the correct expression -- but I was surprised somewhat

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1 by the letter because it was my understanding that for over a  
2 period of years -- or a year anyway -- that there were some  
3 discussions on behalf of Halk Bank with respect to a potential  
4 fine, I guess it would be, in connection with the Iran  
5 sanctions evasion scheme, but more particularly I thought that  
6 King & Spalding had been involved in those discussions. Is  
7 that fair, or is that accurate?

8 MR. LOCKARD: Your Honor, it is accurate that King &  
9 Spalding has represented Halk Bank with respect to the criminal  
10 investigation of the bank since at least October of 2017, and  
11 we think that King & Spalding's letter, along with additional  
12 circumstances, shows that while Halk Bank has declined to  
13 authorize King & Spalding to formally accept service, that  
14 service has in fact been accomplished under Rule 4, and that  
15 Halk Bank is actually aware of the summons, is aware of the  
16 court appearance this morning, and has intentionally failed to  
17 appear at the conference in violation of the summons.

18 THE COURT: Before we get to what next, I suppose it  
19 wouldn't hurt to send a set of the papers by FedEx or some  
20 other form to Halk Bank. Does Halk Bank have a branch or a arm  
21 here in New York?

22 MR. LOCKARD: Halk Bank does not have any employees or  
23 offices in the United States. Halk Bank does have ADRs that  
24 are listed in the United States, and Halk Bank does have a  
25 corresponding account in the United States, so it does business

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1 in the U.S., but it does not have any employees or offices in  
2 the United States.

3 So, I think with the Court's permission, I think we  
4 also would like to discuss next steps, but before that I think  
5 it would be helpful to outline sort of the timeline of the  
6 prior service efforts and the facts that demonstrate that the  
7 bank is in fact aware of the summons and has declined to  
8 appear, and in fact why we think the record demonstrates that  
9 Halk Bank as of this morning is now a fugitive from the charges  
10 in the indictment.

11 THE COURT: Sure.

12 MR. LOCKARD: So, as I mentioned earlier, King &  
13 Spalding has represented the bank since at least the last two  
14 years with respect to the investigation of the bank, and that  
15 is I think referenced in King & Spalding's letter where they  
16 note that the firm has represented the bank in connection with  
17 the Department of Justice's investigation regarding the bank.  
18 I think that is also confirmed in a release that the bank  
19 itself put out on Wednesday after the indictment was returned,  
20 denying that there was jurisdiction over the bank and noting  
21 that King & Spalding had represented the bank in the  
22 investigation.

23 So, the timeline briefly with respect to the  
24 indictment and the summons -- oh, I would also note that in  
25 addition to the press release there are also a number of press

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1 reports indicating that the bank's majority shareholder --  
2 which is the government of Turkey -- also clearly is aware of  
3 the charges against the bank.

4 As the Court knows, the indictment was filed on  
5 Tuesday, October 15. After the indictment was filed, King &  
6 Spalding requested a copy of the indictment from the Department  
7 of Justice, and the government e-mailed a copy of it to the  
8 firm.

9 On Wednesday the Court issued the summons. We again  
10 e-mailed the summons to King & Spalding and requested  
11 confirmation that it had been received. In response to that,  
12 King & Spalding asked to have a phone call with the government  
13 which was scheduled for Thursday, October 17. In the meantime,  
14 Halk Bank issued an investor disclosure regarding the  
15 indictment, claimed that the charges were false and politically  
16 motivated, claimed that the United States doesn't have  
17 jurisdiction over the bank. And there are press reports about  
18 government officials in Turkey calling the indictment ugly and  
19 unlawful, so clearly the bank and its shareholder were aware of  
20 the indictment.

21 THE COURT: Excuse me. Go ahead.

22 MR. LOCKARD: On Thursday, October 17, the government  
23 spoke with King & Spalding about the summons. King & Spalding  
24 indicated that it was not authorized to accept service of the  
25 summons but was discussing it with its client. King & Spalding

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1 asked if the government would consent to an adjournment of the  
2 appearance, which we declined to consent to. We asked if the  
3 bank would stipulate to an alternate form of service if the  
4 firm was not authorized to accept service, and we were told  
5 that the bank would not stipulate to an alternative form of  
6 service. And at that time we understood that the firm King &  
7 Spalding intended to contact the Court to request an  
8 adjournment of today's appearance, and note that we did not  
9 consent to that request. Also note that later that day on  
10 October 17 according to press reports President Erdogan raised  
11 the Halk Bank indictment with U.S. government officials in  
12 Turkey.

13 The summons was electronically filed on the docket  
14 also on Thursday. Then on Friday King & Spalding sent the  
15 letter to the Court that's been docketed as docket entry number  
16 564.

17 The press has also reported that on Saturday, October  
18 19, the Turkish Minister of Foreign Affairs commented on the  
19 indictment to the Turkish press and said that if the law in the  
20 United States works nothing would come of the case.

21 So, I think what that timeline shows is that the bank  
22 is clearly aware of the summons, is aware of the charges, has  
23 denied that there is jurisdiction over the bank, and Turkish  
24 government officials have exercised efforts to exercise  
25 political influence over the proceedings.

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1 THE COURT: When you say that -- did you say that  
2 President Erdogan had raised the subject with U.S. officials in  
3 Turkey?

4 MR. LOCKARD: Yes, that was reported in the media  
5 during the meetings on October 17.

6 THE COURT: Would those be at the embassy level, those  
7 U.S. officials?

8 MR. LOCKARD: Those would be between President  
9 Erdogan, Vice President Pence and Secretary of State Pompeo.

10 THE COURT: Thank you. Go ahead.

11 MR. LOCKARD: And of course those efforts are  
12 consistent with other press reports of persistent government of  
13 Turkey's efforts to exercise political influence over the  
14 course of the investigation and the prosecutions, which I think  
15 the Court is aware of dating back to approximately 2016.

16 So, we think service has been accomplished under Rule  
17 4(c), which provides that a summons is served on an  
18 organization that is not within a judicial district of the  
19 United States by any means that gives notice, and the rule  
20 provides for a number of mechanisms that would satisfy that  
21 notice, but these are not exclusive means of providing notice.  
22 And in a recent case from last year in the Ninth Circuit the  
23 Court of Appeals held that delivery of a summons to U.S.  
24 counsel of a foreign corporation that resulted in actual notice  
25 to the defendant company satisfied the service requirements of

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1 Rule 4. That case is Pangang, and the cite is 901 F.3d 1046.

2 THE COURT: Mr. Lockard, what I'm going to do is ask  
3 you for a draft order in this matter essentially summarizing  
4 the points you've made today -- you can reference the  
5 transcript of these proceedings -- and I will take a look at it  
6 and expeditiously sign off if I think that's appropriate, as it  
7 does seem appropriate based on your comments and my  
8 understanding of the law as well.

9 MR. LOCKARD: So, your Honor, what we would propose,  
10 if the Court agrees with the proposal, is given that Halk Bank  
11 has intentionally failed to appear for today's conference, and  
12 as a result is now a fugitive from charges and is in contempt  
13 of the summons, we have proposed giving the bank an opportunity  
14 to cure that contempt by re-issuing the summons, by setting a  
15 further conference date some date next week. The government  
16 will undertake efforts to serve the re-issued summons by all  
17 available means, including by delivering it to King & Spalding  
18 and any other method that is approved under 4(c), so that the  
19 bank has an opportunity to cure; and if the bank does not  
20 appear at the rescheduled conference, at that time the  
21 government would contemplate requesting contempt sanctions  
22 against the bank.

23 THE COURT: And I would suggest you include that  
24 process in the draft order as well. It sounds like a viable  
25 way to go forward.



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1 Does anybody else want to be heard on this matter? Of  
2 course the record reflects that no one has appeared today on  
3 behalf of Halk Bank, no attorneys in particular from King &  
4 Spalding, as set forth in their letter saying that they were  
5 not authorized to appear on behalf of Halk Bank. So, I think  
6 that's it.

7 Let me take a look at your order. And if you leave  
8 the date blank, maybe two weeks might be more to give Halk Bank  
9 to review and perhaps reconsider, but something of that nature,  
10 a week to two weeks, I would say.

11 MR. LOCKARD: Yes, your Honor.

12 THE COURT: Great. So, I think that's it for today.  
13 Just looking ahead somewhat, you all looked into the contempt  
14 process and how it might apply to Halk Bank?

15 MR. LOCKARD: We have reviewed those issues, and what  
16 we would expect is to outline the Court's authority to issue  
17 contempt sanctions in advance of the appearance.

18 THE COURT: Great. OK. I think that's it for today  
19 then. Nice to see you all, and I look forward to receiving  
20 that draft.

21 MR. LOCKARD: Thank you, your Honor.

22 THE COURT: You bet.

23 (Adjourned)  
24  
25